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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BERTHA ARANDA GLATT

Plaintiff,

v.

CITY OF PASCO, *et al.*,

Defendants.

Case No. 4:16-CV-05108-LRS

REPLY IN SUPPORT OF
DEFENDANTS' MOTION
FOR ENTRY OF PROPOSED
REMEDIAL PLAN AND
FINAL INJUNCTION

12/7/16
With oral argument: 1:00 P.M.

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I. INTRODUCTION

Plaintiff continues to level the same criticism of the City's proposed remedial plan: Because the plan contains a single at-large position, it is allegedly not a full and complete remedy of the Section 2 violation. This criticism is unfounded and relies on a distortion of the legal standard for evaluating proposed remedial plans.

There is no categorical prohibition against the inclusion of at-large positions in legislatively-proposed plans. Indeed, one court has noted that such a *per se* rule "would be in direct contradiction of both the intentions of Congress in enacting the 1982 amendments to the Voting Rights Act and Supreme Court precedent." *NAACP v. Kershaw Cnty.*, 838 F. Supp. 237, 241 (D.S.C. 1993) (internal citation omitted). Plaintiff cites cases where hybrid plans (*i.e.*, those with both at-large positions and single-member districts) were rejected, then erroneously infers that the plans were rejected *because* they were hybrid. Plaintiff confuses correlation with causation. The fair reading of the cases establish that the plans were rejected for reasons other than their inclusion of at-large positions.

Plaintiff's criticism also does not withstand logical scrutiny. Plaintiff contends that the existence of racially-polarized voting precludes the use of at-large positions in legislatively-proposed plans. But racially-polarized voting is a necessary element of a Section 2 claim and therefore will exist in every Section 2

lawsuit that progresses to the remedy phase. According to Plaintiff's logic, however, at-large positions are prohibited in every legislative plan proposed during the remedial phase. But that is not the law.

The relevant inquiry is not whether the legislatively-proposed plan includes an at-large position, but whether the position was included “solely to diffuse [minority] voting strength.” *Kershaw Cnty.*, 838 F. Supp. at 242 (quoting *Hines v. Ahoskie*, 998 F.2d 1266, 1271 (4th Cir. 1993)). The City's years-long efforts to voluntarily change its own election system and promote legislation to provide electoral opportunities to Latinos, *see* ECF No. 25 at 5-10, evince that the at-large position was included for legitimate public policy reasons,¹ not to dilute the Latino vote.

Additionally, courts must determine whether the plan provides the minority group with proportional representation. An electoral scheme does not violate Section 2 “where, in spite of continuing . . . racial bloc voting, minority voters form effective voting majorities in a number of districts roughly proportional to the minority voters' respective shares in the voting-age population.” *Johnson v. DeGrandy*, 512 U.S. 997, 1000 (1994). Here, the City's plan provides Latinos with control over three out of seven seats, which is proportional to the Latino

¹ Plaintiff acknowledges these reasons are “laudable.” ECF No. 27 at 1.

1 share of the eligible voter population. This is the maximum number of seats that
2 can be provided to Latinos for a seven-member body, and the same number of
3 seats offered by Plaintiff's plan.

4 "A district court may reject the defendant's proposal under only one
5 condition: if that proposal 'is legally unacceptable because it violates anew
6 constitutional or statutory voting rights – that is, [if] it fails to meet the same
7 standards applicable to an original challenge of a legislative plan in place.'"

8 *United States v. Euclid City Sch. Bd.*, 632 F. Supp. 2d 740, 750 (N.D. Ohio 2009)
9 (quoting *McGhee v. Granville Cnty.*, 860 F.2d 110, 115 (4th Cir. 1988)). "That
10 single question ends the Court's inquiry." *Id.* The City's plan does not violate any
11 constitutional or statutory voting rights. To the contrary, it provides Latinos with
12 "the maximum *available* 'opportunit[ies] to elect representatives of their
13 choice.'" *Hines*, 998 F.2d at 1273 (quoting 42 U.S.C. § 1973, *recodified as* 52
14 U.S.C. § 10301)). Because the plan is legally acceptable, this Court must adopt it.
15 *Euclid City Sch. Bd.*, 632 F. Supp. 2d at 749-50 (citing *Wise v. Lipscomb*, 437
16 U.S. 535, 539-41 (1979) (plurality)).

II. ADDITIONAL DATA

Defendants' demographer has performed geocoding analysis to determine the Latino share of registered voters in each of the City's six single-member districts and the City as a whole.² Courts routinely look to the registered voter population in evaluating remedial plans. *See, e.g., Dickinson v. Ind. State Election Bd.*, 933 F.2d 497, 503 (7th Cir. 1991) ("The court may consider, at the remedial stage, what type of remedy is possible based on the factors traditionally examined in single-member districts, such as minority voter registration and turn-out rates.")

Geocoding is a standard process used in voting rights cases. Geocoding "involves the use of voter registration data, which includes address information . . . to match voters with their addresses and place them within census blocks." *Martinez v. Bush*, 234 F. Supp. 2d 1275, 1292 (S.D. Fla. 2002). Defendants obtained the October 2016 list of registered voters from the Franklin County Auditor. Using software, registered voters were pinpointed on a map based on their address. The boundaries of each single-member district are overlaid on the map, which shows registered voters who live inside the district. The final step of

² *See* Reply Declaration of John A. Safarli, Exhibit 1 (First Supplemental Report of Peter Morrison, Ph.D.), ¶¶ 7-9.

the geocoding process involves sorting the names of registered voters to identify who has a Spanish surname.

This geocoding process shows that the City's proposal contains three majority-minority districts as measured by eligible voters and registered voters:

District	Latino eligible voter % (LCVAP) (2010-2014 5-year ACS)	Latino registered voter %
1	54.0%	59.2%
2	52.3%	65.8%
3	27.3%	22.9%
4	23.6%	21.7%
5	13.0%	16.0%
6	56.0%	66.1%

As shown above, Districts 1, 2, and 6 have eligible voter and registered voter populations that are more than 50% Latino. Districts 2 and 6 have registered voter populations that are more than 60% Latino (and District 1 is not far behind). There is no doubt that the City's proposal provides Latinos with three opportunities to elect their candidates of choice, which is proportional to the Latino share of the eligible voter population and the maximum number of majority-minority districts available.

Critically, Defendants' geocoding analysis shows that Latinos have a substantial share of both the citywide registered voter population and eligible voter population:

Latino share of citywide eligible voter population (2010-2014 5-year ACS estimate)	31.9%
Latino share of citywide eligible voter population (2015 1-year ACS estimate) ³	38.5%
Latino share of citywide registered voter population	31.8% ⁴

³ Plaintiff complains that the 2015 1-year ACS should not be used because it is less accurate than the 2010-2014 5-year ACS estimate. But the U.S. Census Bureau's own guidelines approve of using 1-year estimates in areas with total populations of 65,000 or more, such as Pasco. Safarli Reply Decl., Ex. 1, ¶¶ 5-6. Additionally, the 2015 1-year estimate is more current than the 2010-2014 5-year estimate, and also accounts for changes in the City's boundaries that have occurred since the 2010-2014 5-year estimate was released. *Id.*

⁴ Plaintiff has calculated that the Latino share of the citywide registered voter population is 29.81%. ECF No. 21-2 at 3. This is mostly like because Plaintiff used a registered voter list from November 2015, whereas Defendants relied on the October 2016 list.

1 The City's and Plaintiff's proposals both provide Latinos with three
 2 majority-minority districts. In Plaintiff's proposal, the next-strongest opportunity
 3 for Latinos is District 5, which has a Latino eligible voter population of 28.98%
 4 (based on the 2010-2014 5-year ACS estimate).⁵ ECF No. 21-2 at 3. In contrast,
 5 the Latino share of the citywide eligible voter population is 38.5% (based on the
 6 2015 1-year ACS estimate) or 31.9% (based on the 2010-2014 5-year ACS
 7 estimate). Under either estimate, Latinos have a stronger share of the eligible
 8 voter population across the entire city than they do in Plaintiff's District 5.

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 10
 11 ⁵ Defendants' and Plaintiff's demographers have different methodologies for
 12 disaggregating census block group-level data about eligible voters to individual
 13 census blocks, which could result in slightly different estimates for the Latino
 14 share of the eligible voter population in each single-member district. However,
 15 Plaintiff's demographer concedes that the "percentage differences . . . are not
 16 significant." ECF No. 28 at ¶8. Still, it is important to note that the methodology
 17 used by Defendants' demographer is consistent with demographic best practices
 18 as established by the U.S. Census Bureau, whereas Plaintiff's methodology is
 19 unsound. *See* Safarli Reply Decl., Exhibit 2 (Second Supplemental Report of Dr.
 20 Peter Morrison), ¶¶ 3-4.

1 Plaintiff's District 5 has a Latino registered voter population of 27.25%.
2 Across the entire city, however, Latinos are 31.8%.⁶ As with the eligible voter
3 population, the Latino proportion of citywide registered voters is superior to their
4 proportion of registered voters in Plaintiff's District 5. Regardless of how Latino
5 voting strength is measured, the data shows that Latino share of the electorate is
6 larger across the entire city than in Plaintiff's District 5.

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9
10 ⁶ In addition to measuring the Latino share of registered voters using the Spanish-
11 surname method, Defendants' demographer used a second method that accounts
12 for false positives (*i.e.*, those with Spanish surnames who do not self-identity as
13 Hispanic on the decennial census) and false negatives (*i.e.*, individuals who
14 identify as Hispanic but do not have Spanish surnames). The results of this
15 method are contained in Dr. Morrison's First Supplemental Report. Safarli Reply
16 Decl., Ex. 1, ¶9 n.2, Table 2 & Appendix. This method, labeled as "% Hispanic"
17 in Dr. Morrison's report, corroborates the conclusion that Latinos are a majority
18 of the registered voter population in Districts 1, 2, and 6. It also indicates that the
19 true measure of the Latino registered voter population could be substantially
20 higher than the Spanish-surname measurement of 31.8%. *See id.*

III. ARGUMENT

A. Plaintiff Mischaracterizes the Standard for Evaluating Remedial Plans

“Redistricting is a legislative task that federal courts ‘should make every effort not to pre-empt.’” *Goosby v. Town Bd. of Hempstead*, 981 F. Supp. 751, 755 (E.D.N.Y. 1997) (quoting *Wise v. Lipscomb*, 437 U.S. 535, 539-41 (1978)). “A district court may reject the defendant’s proposal under only one condition: if that proposal ‘is legally unacceptable because it violates anew constitutional or statutory voting rights – that is, [if] it fails to meet the same standards applicable to an original challenge of a legislative plan in place.’” *Euclid City Sch. Bd.*, 632 F. Supp. 2d at 750 (quoting *McGhee*, 860 F.2d at 115). “That single question ends the Court’s inquiry.” *Id.*

Aware of this principle of deference, Plaintiff argues that it only applies if the legislative proposal “fully remedies” the Section 2. ECF No. 27 at pg. 3. Defendants agree with Plaintiff that this is the test. The parties diverge, however, on the meaning of a full remedy. Plaintiff asserts that a proposal cannot be a full remedy if it contains any at-large seats. Defendants contend that at-large seats are permissible in legislatively-crafted plans. Both case law and logic support Defendants’ position.

In *Citizens for Good Gov’t v. City of Quitman*, the Fifth Circuit explained that “[i]n contrast [to ‘court-ordered plans’], reapportionment plans prepared by

1 legislative bodies may employ multimember [or at-large] districts.” *Id.*, 148 F.3d
 2 472, 476 (5th Cir. 1998) (quoting *McDaniel v. Sanchez*, 452 U.S. 130, 139 (1981))
 3 (alterations in original). Plaintiff asserts that this is “non-binding dicta.” ECF No.
 4 27 at pg. 14. But Plaintiff ignores that the Fifth Circuit was quoting from the U.S.
 5 Supreme Court, which is decidedly binding.

6 Plaintiff also tries to distinguish *NAACP v. Kershaw County*, in which the
 7 Court held that “legislatively-proposed mixed plans are not *per se* violative of
 8 Section 2; to the contrary, they are acceptable.” *Id.*, 838 F. Supp. 237, 241 (D.S.C.
 9 1993). Plaintiff tries to limit *Kershaw County* to its facts because South Carolina
 10 required a seat to be elected at-large. *Id.* at 239 n.2. But the Court’s pronouncement
 11 was clearly not limited to a single state. The Court quoted the Fourth Circuit’s
 12 holding that ““in fashioning an appropriate remedy, legislatures are not limited to
 13 single-member district plans.”” *Id.* at 242 (quoting *Hines v. Ahoskie*, 998 F.2d 1266,
 14 1271 (4th Cir. 1993). The Court went on to explain that categorically prohibiting
 15 at-large elections “would be in direct contradiction of both the intentions of
 16 Congress in enacting the 1982 amendments to the Voting Rights Act and Supreme
 17 Court precedent.” *Id.* at 243 (citing S. Rep. No. 417, 97th Cong., 2d Sess. 16 (1982);
 18 *Thornburg v. Gingles*, 478 U.S. 30, 46 (1986)).

19 Additionally, Plaintiff fails to address *United States v. City of Euclid*, where
 20 the Court held that “[m]aintaining the at large election of the City’s council

1 president does not perpetuate the City's Section 2 violation nor does it give rise to
 2 a new Voting Rights Act violation." *Id.*, 523 F. Supp. 2d 641, 645 (N.D. Ohio 2007).

3 The categorical prohibition against at-large positions also does not withstand
 4 logical scrutiny. According to Plaintiff, the existence of racially-polarized voting⁷
 5 necessarily requires that at-large positions be excluded from any proposal. ECF No.
 6 27 at pg. 3 (Defendants' proposal is not a full remedy because the "inclusion of an
 7 at-large seat allows racially polarized voting to continue"). But racially-polarized
 8 voting is a necessary element of every Section 2 claim. To reach the remedial phase,
 9 racially-polarized voting must exist. But if Plaintiff's argument were true, then no
 10 suit that reaches remedial phase would ever be able to include at-large positions in
 11 the proposal. That cannot be reconciled with case law. *Citizens for Good Gov't*,
 12 148 F.3d at 472; *Kershaw Cnty.*, 838 F.3d at 241; *City of Euclid*, 523 F. Supp. 2d
 13 at 645. There is no categorical prohibition on at-large positions in legislatively-

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 15 ⁷ Racially-polarized voting is a combination of the second and third factors from
 16 *Thornburg v. Gingles*. "The purpose of inquiring into the existence of racially
 17 polarized voting is twofold: to ascertain whether minority group members
 18 constitute a politically cohesive unit [*i.e.*, the second *Gingles* factor] and to
 19 determine whether whites vote sufficiently as a bloc usually to defeat the minority's
 20 preferred candidates [*i.e.*, the third *Gingles* factor]." *Gingles*, 478 U.S. at 56.

1 crafted plans, and the existence of racially-polarized voting does not preclude the
2 inclusion of at-large seats in a remedial plan.

3 The legality of the at-large position depends on whether it was included
4 “solely to diffuse [minority] voting strength.” *Kershaw Cnty.*, 838 F. Supp. at 242
5 (quoting *Hines*, 998 F.2d at 1271). As detailed in Defendants’ previous filings with
6 this Court, the City has included the at-large position for legitimate, policy-based
7 reasons. ECF No. 30 at 7-8. Moreover, the proposition that City included an at-
8 large position to “diffuse” the Latino vote clashes with the City’s years-long efforts
9 to voluntarily change its own election system to provide electoral opportunities to
10 Latinos. *See* ECF No. 25 at 5-10 (detailing efforts).

11 Plaintiff also attempts to downplay the significance of proportionality in
12 evaluating a remedial plan. Although an acceptable remedy need not maximize the
13 electoral opportunities of a minority group, the Supreme Court has identified
14 proportionality as a relevant fact when determining “whether members of a
15 minority group have less opportunity than other members of the electorate to
16 participate in the political process and to elect representatives of their choice.”
17 *Johnson v. DeGrandy*, 512 U.S. 997, 1000 (1994) (internal quotation marks and
18 citation omitted). An electoral scheme does not violate Section 2 “where, in spite
19 of continuing . . . racial bloc voting, minority voters form effective voting
20 majorities in a number of districts roughly proportional to the minority voters’

1 respective shares in the voting-age population.” *Id.* at 1000; *see also City of Euclid*,
2 523 F. Supp. 2d at 645 (explaining the inclusion of an at-large position was
3 acceptable because “the number of opportunity districts in the proposed remedial
4 plan is roughly proportional to the percentage of Euclid’s African-American
5 voting-age population. The existence of an at large seat for council president
6 already has been contemplated in this proportion.”)

7 Both the City and Plaintiffs’ proposals provide Latinos with control over
8 three out of seven positions, which is proportional to the Latino share of the eligible
9 voter population. Moreover, three majority-minority districts is the “the maximum
10 *available* . . . ‘to elect representatives of their choice.’” *Hines*, 998 F.2d at 1273
11 (quoting 42 U.S.C. § 1973, *recodified as* 52 U.S.C. § 10301). The only material
12 difference between the City and Plaintiffs’ plans is the next-best electoral
13 opportunity in each plan. In the City’s proposal, this is the at-large position. In
14 Plaintiff’s proposal, this is District 5. As discussed above and more fully below,
15 the at-large position in the City’s plan is a superior electoral opportunity to
16 Plaintiff’s District 5. Before reaching that issue, however, Defendants will address
17 the cases cited by Plaintiff.

B. Courts Do Not Reject Hybrid Plans Simply Because They Are Hybrid

Plaintiff claims that “courts have generally rejected the retention of at-large seats in election systems as incomplete Section 2 remedies.” ECF No. 27 at pg. 6. This is an oversimplification and misrepresentation of the law. More specifically, Plaintiff conflates correlation with causation. Although courts have rejected proposals that included at-large positions, the proposals were not rejected *because* they included at-large positions. A careful examination of the cases cited by Plaintiff establishes that hybrid plans are rejected for other reasons. Indeed, several of the cases cited by Plaintiff affirm that at-large seats are permissible in legislatively-proposed plans.

In *LULAC Council No. 4836 v. Midland Indep. Sch. Dist.*, 648 F. Supp. 596, 609 (W.D. Tex. 1986), a seven-member school district proposed two plans. The first had three at-large positions and four single-member district seats (“3-4 plan”); the second had five at-large positions and two single-member district seats (“5-2 plan”). Under the 3-4 plan, only one of the single-member districts was majority-minority. *Id.* at 602. Thus, the 3-4 plan gave minority voters control over only one out of seven seats. In the 5-2 plan, both of the single-member districts were majority-minority, but the Court rejected the plan because it “place[d] the board trustees from the minority districts in a special category . . . because they would be the only two members elected by a single-member district.” *Id.* at 608. In this case,

1 the City's proposal provides Latinos with a proportionate number of opportunities
 2 to elect their candidate of choice, and includes single-member districts with both
 3 Latino and non-Latino majorities.

4 In *Williams v. City of Texarkana*, 861 F. Supp. 771 (W. D. Ark. 1993), the
 5 Court rejected the city's proposal of six single-member districts and one at-large
 6 seat in favor of the plaintiff's seven single-member district plan. The plaintiff's
 7 seven single-member district plan included two majority-minority districts, plus a
 8 district in which the minority population was 45.8%. *Williams* did not discuss how
 9 many majority-minority districts were included in the city's proposal, but a fair
 10 reading of the case suggests that the city's proposal provided fewer majority-
 11 minority districts than the plaintiff's proposal.

12 Importantly, the Court noted:

13 The Court does not believe it is impossible for a plan featuring an "at
 14 large" position to comply with the Voting Rights Act, and *knows of no*
 15 *case which so holds*. In fact, such a plan would provide an opportunity
 for all citizens, black and white, to have a voice in the selection of the
 mayor.

16 *Id.* at 772 (emphasis added). *Williams* is consistent with the cases cited by
 17 Defendants that at-large positions are permissible in legislative-crafted proposals.

18 The next case cited by Plaintiff, *United States v. Dallas Cnty. Comm'n*,
 19 *Dallas Cnty., Ala.*, 850 F.2d 1433 (11th Cir. 1988), is distinguishable both
 20 procedurally and substantively. In that case, the Court adopted its own plan—as

1 opposed to either parties' plan. *Id.* at 1437. Unlike legislatively-drafted plans,
2 judicially-created plans may not include any at-large positions. *Citizens for Good*
3 *Gov't v. City of Quitman*, 148 F.3d 472, 476 (5th Cir. 1998). By including an at-
4 large seat, the Court's plan conflicted with the *per se* prohibition against at-large
5 positions in judicially-created plans. *Chapman v. Meier*, 420 U.S. 1, 27 (1975).
6 Given this, the fact that the Eleventh Circuit reversed the district court is not
7 surprising. Additionally, the Court's plan contained four single-member districts
8 and one at-large seat. Only one of the single-member districts was majority-
9 minority. *Id.* at 1438. Thus, the Court's plan gave African-Americans control over
10 only one out of five (or 20% of seats). African-Americans, in contrast, constituted
11 nearly half of the eligible voter and registered voter populations. *Id.* at 1434-35.

12 The hybrid plan in *Dallas County* was rejected because it violated the
13 prohibition on at-large positions in judicially-crafted plan, and because it did not
14 give African-Americans a proportionate number of seats. In this case, the City's
15 plan provides a proportionate number of election opportunities. And because the
16 City's plan is a legislative proposal, the inclusion of an at-large position is
17 permissible. Indeed, the Eleventh Circuit in *Dallas County* affirmed this rule: "The
18 Supreme Court has repeatedly said that at-large procedures are not unconstitutional
19 *per se.*" *Id.* at 1438 (quoting *Dillard v. Crenshaw Cnty.*, 831 F.2d 246, 250 (11th
20 Cir. 1987)).

1 *United States v. Osceola Cnty*, 474 F. Supp. 2d 1254 (M.D. Fla. 2006) and
 2 *Harvell v. Blytheville Sch. Dist. No. 5*, 126 F.3d 1038 (8th Cir. 1997) both involve
 3 legislative hybrid plans that provided minority voters with fewer election
 4 opportunities than their share of the electorate would dictate. *Osceola Cnty.*, 474 F.
 5 Supp. 2d at 1256 (county’s hybrid proposal would have given Latinos control of
 6 only 14% of seats, while the government’s proposal gave Latinos a reasonable
 7 opportunity to elect 20% of board members; Latino share of the voting-age
 8 population was approximately 27.14%); *Harvell*, 126 F.3d 1038 (legislatively-
 9 proposed plan gave African-American voters control over only 28.5% of seats in
 10 favor of competing plan that gave control over 37.5% of seats; African-Americans
 11 were 31.04% of eligible voter population). As with the other cases cited by
 12 Plaintiff, neither *Osceola County* nor *Blytheville School District* endorsed a *per se*
 13 prohibition against at-large positions in legislatively-created proposals.

14 Plaintiff cites *Montes v. City of Yakima*, but that decision also does not
 15 preclude at-large positions in legislatively-proposed plans. In *Montes*, the city’s
 16 proposal “d[id] not provide a present opportunity for Latinos to obtain roughly
 17 proportional representation.” No. 12-cv-03108 (E.D. Wash.), ECF No. 143 at 24.
 18 The Court was also concerned that the city’s proposal violated state law by not

20 ⁸ *United States v. Osceola Cnty.*, 475 F. Supp. 2d 1220, 1223 (M.D. Fl. 2006).

1 including a primary election for the two at-large positions. *Id.* at 17-18. The fact
2 that the city's rejected proposal in *Montes* contained at-large seats does not mean
3 that the proposal was rejected *because* it contained at-large seats. A careful
4 examination of *Montes* and the other cases cited by Plaintiff shows that the hybrid
5 plans were rejected for other reasons (*e.g.*, lack of proportional representation) that
6 are not present in the City's proposal. In short, none of the cases cited by Plaintiff
7 are analogous.

8 **C. The City's Proposal is a Full and Complete Remedy**

9 As established above, there is no categorical prohibition on at-large positions
10 in legislatively-crafted plans, and the existence of racially-polarized voting does
11 not preclude the inclusion of at-large positions in a remedial plan. Instead, the
12 inquiry is whether (1) the at-large position was included solely to diffuse minority
13 voting strength, *Kershaw Cnty.*, 838 F. Supp. at 242; and (2) whether the City's
14 proposal provides Latinos with electoral opportunities in proportion to their share
15 of the eligible voter population. *Johnson*, 512 U.S. at 1000.

16 The answer to the first question is a resounding "no," as demonstrated by the
17 self-evident benefits of citywide representation and the City's history of attempting
18 to voluntarily change its election system for the benefit of Latino voters. *See* ECF
19 No. 25 at 5-10. The answer to the second question is "yes," as the City's plan
20 provides Latinos with control over three out of seven seats, which is the maximum

1 number available and is proportional to the Latino eligible voter share. This is also
2 the same number of seats that Plaintiff's proposal provides to Latinos.

3 Aside from the three majority-minority districts, the next-strongest election
4 opportunity in Plaintiff's plan is District 5, which has an eligible voter population
5 that is 28.98% Latino. ECF No. 21-2 at 3. In contrast, the Latino share of citywide
6 eligible voter population is 31.9% according to the 2010-2014 5-year ACS, and
7 38.5% according to the 2015 1-year ACS estimate—nearly *10 percentage points*
8 *higher* than Latino share of Plaintiff's District 5's eligible voter population.
9 Additionally, Plaintiff's District 5 has a registered voter population that is 27.25%
10 Latino. But Latinos comprise 31.8% of the citywide registered voter population.
11 Under both the eligible voter and registered voter population measurements,
12 Latinos have a superior opportunity to elect their candidate of choice in an at-large
13 election than in Plaintiff's District 5.

14 Plaintiff argues that the existence of racially-polarized voting puts the at-
15 large position "out of reach of the Latino community" because the white majority
16 will consistently vote as a bloc to cancel out Latino voters. ECF No. 27 at pg. 1.
17 But this contention ironically applies with greater force to Plaintiff's District 5.
18 Because Latinos are a smaller share of the electorate in Plaintiff's District 5 than
19 they are citywide, Latinos are *less* able to elect their candidate of choice in
20 Plaintiff's District 5.

Moreover, demographic data undeniably shows that the City's Latino electorate is increasing rapidly. Student enrollment data from the Pasco School District is a stark example. Nearly 71% of students are Latino. ECF No. 26-13 at ¶4. Plaintiff's demographer, William Cooper, disputes the relevance of this statistic, but his criticisms ring hollow. Mr. Cooper claims that this statistic should be ignored because the Pasco School District encompasses a geographical area that includes—but is much larger than—the City. ECF No. 28 at ¶¶4-7. Mr. Cooper ignores the fact that most of the excess geographical area is empty acreage. 68,155 people reside within the school district's boundaries. The City's total population (62,452) accounts for 92% of the school district's population. Safarli Reply Decl., Ex. 2 at ¶¶1-2. Although the boundaries of the Pasco School District are not coextensive with the City's boundaries, there is substantial population overlap. The fact that 71% of the school district's students are Latino is informative to projecting the City's population growth.

Although Mr. Cooper cannot bring himself to acknowledge the relevance of the Pasco School District's demographic profile, he still recognizes that Latinos make up an enormous part of the City's youth population. Instead of relying on the school district's statistics, Mr. Cooper examines only the number of Latinos under 18 who reside in the City. He cites the 2010 Decennial Census, which shows that 66.47% of the City's youth are Latino. ECF No. 28 at ¶7. Critically, he also cites

1 the 2010-2014 5-year ACS and 2015 1-year ACS, which show that Latinos are
 2 64.86% and 66.6%, respectively, of the City's under-18 citizen population. *Id.* This
 3 supports the conclusion of Defendants' demographer that Latinos will comprise
 4 more than 40% of the eligible voter population by 2021.⁹

5 Because the data shows that Plaintiff's District 5 is an inferior election
 6 opportunity compared to the at-large position in the City's proposal, Plaintiff
 7 resorts to asserting that campaigning in a citywide election is more costly. Notably,
 8 Plaintiff has not presented any evidence to support this assertion. Plaintiff's
 9 argument is entirely speculative and does not consider whether "campaign costs
 10 could actually be higher in a single-member district, if a highly competitive
 11 campaign developed." *Wilson v. Vahue*, 403 F. Supp. 58, 63 (N.D. Tx. 1975).

12 Next, Plaintiff attempts to attack the inclusion of an at-large seat by arguing
 13 that it is a "swing seat" that will remain under control of non-Latino voters until
 14 Latinos become a majority of the electorate. Plaintiff tries to analogize this to
 15 *Harper v. City of Chicago Heights*, 223 F.3d 593 (7th Cir. 2000), but that case is
 16 inapposite. In *Harper*, the Court considered a proposal with six alderman elected

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 18
 19 ⁹ Dr. Morrison's methodology for his projection is contained in his Second
 20 Supplemental Report. Safarli Reply Decl., Ex. 2, ¶¶5-9 & Table 1.

1 by single-member districts and a mayor elected at-large. Three of the six single-
 2 member districts were majority-minority.

3 The mayor had special powers, in that he or she was “was authorized to
 4 appoint a city clerk and treasurer . . . as well as administrative assistants and a
 5 budget and finance director.” *Id.* at 597. The mayor could also “exercise veto
 6 power, which can be overridden only by a 3/5 majority of the council (i.e. four of
 7 the six aldermen).” *Id.* at 598. Finally, the plaintiffs submitted evidence that the
 8 mayor frequently served as a tiebreaker by voting with “the white aldermen.” *Id.*
 9 While noting that “at-large procedures are not unconstitutional per se,” the Court
 10 determined that “[t]he evidence of the mayor’s pattern of voting in tie-breaking
 11 situations, taken with the likelihood of ties on an even-numbered council” was
 12 sufficient to invalidate the hybrid plan. *Id.* at 600.

13 In *Harper*, the plaintiffs supported their position by submitting evidence of
 14 voting behavior by the aldermen and the mayor. Here, Plaintiff tries to avail herself
 15 of *Harper* but fails to offer any facts to support her application of that case.¹⁰
 16

17 ¹⁰ Although Plaintiff tries to minimize it, *see* ECF No. 27 at 13, the Court’s
 18 decision in *Harper* was also based on the special authority given to the mayor. In
 19 the City’s proposal, the at-large position does not have any special designation.
 20 The City’s mayor is not chosen by voters, but by the City Council itself. RCW

1 Indeed, Plaintiff's argument is based on flawed reasoning: Plaintiff asserts that
 2 Latinos and non-Latinos vote for different candidates and, therefore, those
 3 candidates will necessarily vote differently on the issues once in office. While
 4 voters may vote differently because of their ethnicity, Plaintiff has not shown that
 5 *elected officials* vote differently because of their ethnicity. To assume that without
 6 evidence would be extremely reductive.

7 Furthermore, Plaintiff's argument applies equally to her own proposal. In
 8 Plaintiff's plan, Latinos will have control over three single-member districts (the
 9 same number as in the City's plan). But under Plaintiff's proposal, four single-
 10 member districts are firmly in the hands of non-Latino voters. Plaintiff apparently
 11 believes her District 5 is a "swing" district but, as established above, Latinos have
 12 better numbers citywide than they do in Plaintiff's District 5. Plaintiff cannot
 13 complain about the City's at-large position "swinging" toward non-Latino voters
 14 when Plaintiff's District 5 leans even more heavily toward non-Latino voters.

15
 16
 17
 18 35A.13.030. The position of mayor, moreover, is primarily ceremonial, with no
 19 additional powers nor any regulatory duties. *See id.* Critically, the City's mayor
 20 has no veto power as it did in *Harper*.

1 **IV. CONCLUSION**

2 The City's proposal is constitutional, fully cures the Section 2 violation
3 established in the Consent Decree, and provides Latinos with a full and fair
4 opportunity to participate in the political process. Plaintiff's *sole* objection to the
5 City's plan is that it contains one at-large seat. But it is black-letter law that
6 legislatively adopted plan may utilize at-large districts. Because Defendants' plan
7 provides a complete remedy to the Section 2 violation, is must be given deference
8 by this Court and adopted.

9
10 RESPECTFULLY SUBMITTED this 15th day of November, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2016, I electronically filed the foregoing Notice of Association of Counsel with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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